IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1375 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEPUTY EXECUTIVE ENGINEER - Petitioner(s)

Versus

ABHESINGH GABESINGH BARIA - Respondent(s)

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Appearance :

MS SEJAL K MANDAVIA for Petitioner No(s).: 1.

MR NILESH M SHAH for Respondent No(s).: 1.
MR MAYANK DESAI for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 19/07/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the order dated 30.11.1998 passed by the Labour Court, Vadodara, in

Reference (LCV) No.383 of 1991, whereby the petitioner was directed to reinstate the respondent w.e.f. 11.01.1991 and also to pay back wages @ Rs.30.00 per day from 01.01.1992 till he is reinstated in service.

2.0 The brief facts of the case are that the respondent was working as a daily wager with the petitioner from 05.09.1988. It is the case of the petitioner that the respondent gave his resignation on 08.01.1991, and, thereafter, joined service with one Akshar Chemicals Ltd.. and had worked there from 19.01.1991 to 20.07.1991. Thereafter, from 24.10.1991 he joined service in one M/s. Bhagirath Engineering Ltd..

2.1 Thereafter, the respondent raised a dispute, which culminated into a reference. The Labour Court, by impugned award, allowed the reference as aforesaid. Hence, this petition.

3.0 Ms. SK Mandavia learned advocate for the petitioner has contended that the Labour Court has committed an error in granting reinstatement inasmuch as the Government Resolution pursuant to which the alleged resignation is said to have been taken by the Officer of

the petitioner was issued on 17.01.1992, whereas the resignation was submitted on 08.01.1991 only. She has, therefore, submitted that after the workman had left the service the said Resolution had come into existence, and therefore, the Labour Court ought not to have granted the respondent reinstatement in service.

3.1 Ms. Mandavia has further contended that after the respondent had left the service of the petitioner on 10.01.1991, he had served with two other companies and the said fact was also believed by the Labour Court. She has, therefore, submitted that when the workman was gainfully employed, the Labour Court ought not to have awarded the respondent back wages.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. Having gone through the impugned award, it appears that the Labour Court has not believed the theory of resignation put forward by the petitioner and has concluded that the said resignation was taken only with a view to come out of the Government Resolution dated 17.01.1992. In my opinion, the Labour Court was completely justified in rejecting the theory of resignation put forward by the petitioner.

I am in complete agreement with the reasonings given by the Labour Court while rejecting the theory of resignation put forward by the petitioner.

4.1 However, since the respondent workman was working as a daily wager and it was proved that he was gainfully employed during the said period, the Labour Court ought not to have awarded him any back wages.

5.0 In above view of the matter, the petition is partly allowed. The impugned award of the Labour Court qua granting reinstatement in service is confirmed and the direction qua awarding back wages is quashed and set aside. Since the impugned order of the Labour Court was stayed by this Court vide order dated 18.10.1999, the petitioner is directed to reinstate the respondent on his original post within a period of four weeks from the receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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